

DEPARTMENT OF AGRICULTURE
STATE OF SOUTH DAKOTA
SERVICE CONTRACT

THIS AGREEMENT IS HEREBY made and entered into by and between the South Dakota Department of Agriculture, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "State") and Travis Hartshorn DBA Hartshorn Trucking of 13699 LH RD., Hermosa, SD 57744-5420, (**hereinafter "Contractor"**).

The State hereby enters into this Agreement for services with Contractor in consideration of and pursuant to the terms and conditions set forth below.

1. The Contractor will perform those services described in the Resource Work Plan, attached hereto as **Exhibit A** and by this reference incorporated herein.

2. The Contractor's services under this Agreement shall commence on the 6th **Day of July, 2010 and end on the 5th Day of July, 2011**, and up to four (4) one-year option renewal periods, unless sooner terminated pursuant to the terms hereof.

3. The Contractor will not use State equipment, supplies or facilities. The Contractor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

4. The State will make payment for services upon satisfactory completion of the services. The contract amount is an amount not to exceed \$100,000.00 per calendar year, **with the TOTAL CONTRACT amount not to exceed \$500,000.00**. The State will not pay Contractor's expenses as a separate item. Payment will be made consistent with SDCL ch. 5-26.

5. The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Contractor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Standard Service Contract Form
Revised March 2010

The Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00 as is necessary or required by South Dakota Law.

C. Business Automobile Liability Insurance:

The Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

7. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The Contractor will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or three years following termination of this Agreement.

8. While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

9. Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

10. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions of this Agreement, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's

Standard Service Contract Form

Revised March 2010

default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

11. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

15. The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

16. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. **Notices shall be given by and to Cindy Hansen, 4250 Fire Station Rd., Ste 2, Rapid City, SD 57703 on behalf of the State, and by _____, on behalf of the Contractor, or such authorized designees as either party may from time to time designate in writing.** Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

17. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

Standard Service Contract Form
Revised March 2010

18. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

19. Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Contractor in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

20. The Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

21. CONTRACTOR agrees to **furnish a cost statement or equipment use invoice to the Fire Business Accountant (address below)**, within 30 working days of the incident for all related expenditures that CONTRACTOR incurred and are related to damages or expenses associated with forest fire suppression or all risk activities. All original paperwork and/or payment documents and receipts must be submitted with the cost statement to:

Fire Business Accountant
South Dakota Wildland Fire Suppression Division
4250 Fire Station Road, Suite #2
Rapid City, SD 57703-8722

22. The rates that are assigned to each piece of equipment are determined by the South Dakota Secretary of Agriculture. The rates may be updated each year. Any updates will be forwarded to the contractor. The base rate includes a specific staffing level depending on the type of equipment.

23. Staffing levels for equipment are determined by policies set forth in the National Interagency Mobilization Guide and local zone dispatch protocols. Manning levels may vary as requested by the requesting agency. The contractor agrees to provide a staffing level as indicated below.

ENGINE TYPES:

Minimum Standards by Type

Requirements	Engine Type							
	Structure		Wildland					
	1	2	3	4	5	6	7	9*

Standard Service Contract Form

Revised March 2010

Tank minimum capacity (gal)	300	300	500	750	400	150	50	50
Pump minimum flow (gpm)	1000	500	150	50	50	50	10	6
@ rated pressure (psi)	150	150	250	100	100	100	100	100
Hose 2½"	1200	1000	-	-	-	-	-	-
1½"	500	500	1000	300	300	300	-	100
1"	-	-	500	300	300	300	200	½"
Ladders per NFPA1901****	Yes	Yes	-	-	-	-	-	-
Master stream 500 gpm min.	Yes	-	-	-	-	-	-	-
Pump and roll	-	-	Yes	Yes	Yes	Yes	Yes	Yes
Maximum GVWR (lbs)	-	-	-	-	26,000	19,500	14,000	
Personnel (min)	4**	3	3***	3***	3***	3***	3***	3

*- State standard not NWCG requirement

** - In-State standard is 4 personnel (Out-of-State requires 4 personnel)

*** - In-State standard is 3 personnel (Out-of-State requires 3 personnel)

**** - In-State standard is 20 feet of ladder (Out-of-State requires 48 feet)

Common additional needs. Requested as needed.

- All wheel drive
- High pressure pump (250 psi @ ½ flow of Type)
- Foam Proportioner
- Compressed air foam system (CAFS) with minimum 40 cfm compressor
- Additional personnel

WATER TENDER TYPES:

Minimum Standards by Type

	Water Tender Type						
	Support			Tactical		State Standard	
Requirements	S1	S2	S3	T1	T2	4*	5*
Tank capacity (gal)	4000	2500	1000	2000	1000	400+	400+
Pump minimum flow(gpm)	300	200	200	250	250	80+	---
@ rated pressure (psi)	50	50	50	150	150	---	---
Max. refill time (minutes)	30	20	15	---	---	---	---
Pump and roll	---	---	---	Yes	Yes		
Personnel (min)	1	1	1	2	2	1	1

* - State standard not NWCG requirements

- All types shall meet federal, state and agency requirements for motor vehicle safety standards, including all gross vehicle weight ratings when fully loaded.
- Type 3 engines and tactical water tenders shall be equipped with a foam proportioner system.
- All water tenders and engine types 3 through 6 shall be able to prime and pump water from a 10 foot lift.
- Personnel shall meet the qualification requirements of NWCG *Wildland Fire Qualification System Guide*, PMS 310-1.
 - Water tenders must carry appropriate hose, clamps, adapters, and tools to be able to fill engines and or portable tanks. Tenders must also carry a minimum of one shovel and pulaski. Tenders participating in out of state

dispatches must meet minimum federal guidelines for equipment and accessories.

- General specification for Engines and Tenders:
 - Larger diameter hose may be substituted for smaller hose to achieve total needed length.
 - Hose size is hose coupler size.
 - Engines must carry fittings to connect all hose on the apparatus.
- Ordered Structural Fire Engines - Any engine specifically ordered for the purpose of providing structural fire protection should have the basic gear and safety equipment required by structural fire fighting standards. Each engine must have, at a minimum, the following items for personnel:
 - NFPA approved protective clothing for structural fire fighting.
 - NFPA approved protective hoods.
 - NFPA approved gloves for structural fire fighting.
 - NFPA approved helmets for structural fire fighting.
 - NFPA approved SCBA's; for structural fire fighting.
 - NFPA approved footwear for structural fire fighting.
 - 400 ft of 1 ½ " single jacket wildland hose.
 - 200 ft of 1" single jacket wildland hose.
 - 2 – Shovels: 1 – McLeod, 1 – Pulaski
 - The following appliances: 2 – 1 ½ " to 1" Forestry "T"s", 2 – Reducers
 - NST – 1 ½ " to 1".
 - 2 – 1 ½ " – 40 GPM nozzles.
 - 2 – 1" – 20 GPM nozzles.
 - 2 – Forestry clamps for single jacket wildland hose.
 - Fire shelters for all engine crew members.
 - Wildland fire personal protective equipment for all engine crew members.

A deduction of \$25 per person per hour will be made when the above staffing levels are not met.

24. **Severity Patrol** and **Prescribed Burn** requests will be paid at 75% of the rate set for fire suppression.

25. Contract resources are not entitled to paid days(s) off upon release from the incident or at their point of hire.

26. **PROOF OF AUTHORITY TO SIGN:** If the contracting party is not a natural person, **evidence of authority** granted by the legal entity to the natural person who signs this agreement on behalf of the legal entity **must be attached hereto** as a condition precedent to any obligation by the State of South Dakota under the agreement. A copy of a resolution of the governing body or minutes of a regular meeting showing approval of the agreement or an ordinance approving the agreement and authorizing a named person to sign the agreement shall be adequate proof of authority.

Standard Service Contract Form

Revised March 2010

In Witness Whereof, the parties signify their agreement by signing below.

STATE

CONTRACTOR

BY: [Signature]
Jon Farris, Acting Secretary,
South Dakota Department of Agriculture

BY: [Signature]
NAME Travis Hartshorn
TITLE Owner

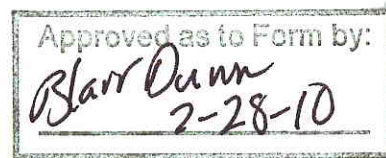
Dated this 30 Day of July, 2010

Dated this 20 Day of July, 2010

Standard form pre-approved by: (deviations require initials)

Reviewed by:

DOA Staff Attorney _____ (on _____ date)
Attorney General's Office _____ (on _____ date)
Risk Management _____ (on _____ date)



- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.

Thursday, August 05, 2010

Exhibit A Resource Work Plan

Resource = Hartshorn Trucking

Resource	Hartshorn Trucking	Address	13669 LH RD	Phone	605-431-8358	Agreement Date	04/01/2007 to 03/31/2009
Contact	Hartshorn, Travis		Hermosa SD 57744	Fax	605-255-5373	Agreement #	
Position	Owner		Custer County			Type	Private

Equipment

Kind - Type	Unit #	Make	Cost	Guarantee	Unit	Misc Info
Tender, Water - S1	11	STE Tanker	\$155.00	\$0.00	Hour	On the Water Trailer will Haul Slurry, 40' of 4" hard suction hose. Rate is higher due to total of 6 axles.